IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 307 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL RAJENDRAKUMAR JESANGBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 307 of 2004

MR PR NANAVATI for Petitioner No. 1

MR. V.M.PANCHOLI, APP for Respondent No. 1

MR ATUL G BAROT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 24/08/2004

ORAL JUDGEMENT

Rule. Mr. V.M.Pancholi, learned APP appears and waives service of notice of rule on behalf of respondent

No.1 State of Gujarat whereas Mr. Atul G Barot, learned advocate appears and waives service of notice of rule on behalf of respondent No.2 - original accused.

2. By means of filing this petition under Article 226 of the Constitution of India petitioner, who claims to be the registered owner of Vehicle, i.e. Truck bearing registration No. GJ/2V/5618 (Tata Model LPT/1612), has brought under challenge the order dated 20.2.2004 rendered in Criminal Revision Application No. 15 of 2003 by the learned Additional Sessions Judge Deesa confirming the order dated 6.5.2003 passed below exhibit-3 of prohibition FIR No. 105 of 2002 by the learned Judicial Magistrate First Class, Dhanera, by which the learned JMFC has rejected the application filed under Sections 451 and 457 of the Code of Criminal Procedure ('the Code' for short) for taking back the possession of the said vehicle during pendency of the trial.

3. Petitioner, who is the owner of Truck bearing registration No. GJ/2V/5618 (Model Tata LPT-1612), had entered into an agreement of sale of Truck with respondent No.2 on certain conditions. But in the meantime the said Truck was seized from respondent No.2 in connection with the FIR registered vide CR No.105 of 2002 against respondent No.2 for alleged commission of the offence under Prohibition Act. Since respondent No.2 could not pay the amount as agreed, the said agreement to sale came to be terminated. After the investigation was over, chargesheet was submitted before the learned JMFC, Dhanera which is registered as Criminal Case No. 115 of 2003. The petitioner preferred an application under Sections 451 and 457 of the Code, below exhibit-3 in the criminal case for taking back the said Truck during pendency of the trial. The learned JMFC vide order dated 6.5.2003 rejected the said application. Aggrieved thereby, the petitioner preferred Criminal Revision Application No. 15 of 2003 before the learned District and Sessions Judge, Banaskantha at Deesa which was rejected by order dated 20.2.2004, which has given rise to the present petition.

4. I have heard Mr. P.R.Nanavaty, learned advocate of the petitioner, Mr. V.M.Pancholi, learned PP appearing on behalf of respondent No.1 State of Gujarat and Mr. Atul Barot, learned advocate appearing on behalf of respondent No.2 - original accused, from whose custody the Truck was seized. I have also perused the averments made in the petition as well as both the impugned orders.

5. One R.G.Pandey, PSI of Panthavada Police Station of Banaskantha District has lodged an FIR against two persons, including present respondent No.2 for alleged commission of the offence under Sections 66B and 65 AE, 81, and 116(2) of the Bombay Police Act. Respondent No.2, who was coming with the Truck bearing registration No. GJ-2V-5618, was intercepted by the PSI during patrolling. In the said Truck contraband articles, i.e. 7104 liquor bottles valued at Rs. 9,19,200/- were seized. At the conclusion of the investigation, charge sheet is filed against respondent No.2 as well as against another accused. During pendency of the trial present petitioner has submitted an application under Sections 451 and 457 of the Code for taking back the said Truck which came to be rejected. The said order was also subject matter of challenge before the revisional court where also it met with the same fate.

6. There is no manner of doubt that the present petitioner is the registered owner of the said Truck as per RTO records. There is also no manner of doubt that he entered into an agreement with respondent No.2 for selling the said Truck on certain conditions. As per the terms and conditions mentioned in the said agreement, on nonpayment of the installments petitioner has a right to take back the said Truck from respondent No.2. Respondent No.2 has not paid the installments as per the said terms and conditions mentioned in the said agreement. During the said period respondent No.2 brought contraband article in the said Truck and during interception he was found with the contraband articles, therefore the muddamal article, i.e. contraband liquor bottles together with the Truck was seized. It may also be noted that the present petitioner is not accused in the said FIR.

7. In aforesaid view of the matter if the Truck, which is lying with the Panthavada Police Station, is not released, it would remain without yielding any income and it may also be deteriorated during passage of the time. It is obvious that some time would be taken to conclude the trial and therefore during the pendency of the trial, it is desirable and in the interest of justice that the possession of the Truck be handed over to its registered owner by imposing certain conditions.

8. Hence, the vehicle, i.e. Truck bearing registration No. GJ-2V-5618, seized in connection with the offence registered vide CR No. 105 of 2002 at Panthavada Police Station, which is at present lying at Panthavada Police Station, shall be returned to the

petitioner by way of interim custody pending the trial on the following conditions:

(i) The petitioner shall furnish a solvent surety of an amount of Rs.2,00,000/- (Rupees Two lakhs) with personal bond of the like amount to the satisfaction of the learned JMFC, Dhanera.

(ii) The petitioner shall file an undertaking before the learned JMFC, Dhanera to the effect that he shall not transfer or part with the possession of the vehicle bearing registration No. GJ-2V-5618 without prior permission of the learned JMFC, Dhanera and shall also produce the same as and when called for by the learned Magistrate during the trial.

9. Resultantly, the petition succeeds and accordingly it is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*